

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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Washington D.C. 20002
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

KEYSTONE PLUS CONSTRUCTION
Respondent

Case No.: I-00-10116
I-00-10128

FINAL ORDER

On February 16, 2000, the Government served a Notice of Infraction (No. 00-10116) charging Respondents with violating 21 DCMR 502.1, which requires persons who undertake land disturbing activities to obtain a permit. The Notice of Infraction asserted that the infraction had taken place at Stanton Elementary School on 25th Street, S.E. and sought a fine of \$500.00.¹ Respondent did not answer the Notice of Infraction within fifteen days of service. Accordingly, on March 14, 2000, this administrative court issued an order finding Respondent in default, assessing a penalty of \$500.00 pursuant to D.C. Code § 6-2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction as required by D.C. Code § 6-2712(f).

On March 23, 2000, the Government served the second Notice of Infraction (No. 00-10128). Respondent also did not answer that Notice within fifteen days of service. Accordingly,

¹ The violation at issue in this matter is distinct from the violation alleged in Case No. I-00-10117 and I-00-10129, involving a construction project at 28th Street and Gainesville Street, S.E. Respondent has admitted that violation and paid the applicable fine and penalties.

on June 9, 2000, this administrative court issued a Final Notice of Default, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set July 5, 2000 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

Prior to the July 5 hearing, the Government filed a copy of a photograph and the Field Inspection Report of the inspector who issued the Notices of Infraction, which were admitted into evidence at the hearing and are part of the record. Respondent did not appear at the hearing and did not submit any evidence.

II. Findings of Fact

Based upon the exhibits submitted by the Government and the entire record in this case, I make the following findings:

1. Respondent engaged in land disturbing activities at Stanton Elementary School on 25th Street, S.E.
2. Respondent did not have a permit authorizing such activities.
3. The Notices of Infraction in this matter were served on Respondent on February 16, 2000 and March 23, 2000, as evidenced by the certificate of service signed by the Government's representative.

4. This administrative court's March 14, 2000 order was served on Respondent by certified mail. Respondent received that order on March 17, 2000 as evidenced by the return receipt that is part of the record.
5. This administrative court's Final Notice of Default, along with copies of both Notices of Infraction, was served on Respondent by certified mail on June 9, 2000. Respondent received that mailing on June 13, 2000, as evidenced by the return receipt that is part of the record.
6. Respondent has offered no explanation for its failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondents had adequate notice of the charges as mandated both by the Due Process Clause and by the applicable statute. Service of the Notices of Infraction by mail to Respondent's last known address is sufficient notice. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985). In addition, Respondent received actual notice of the charges, as evidenced by the certified mail receipts for this administrative court's orders of March 14, 2000, and June 9, 2000.
2. By engaging in land disturbing activities without a permit, Respondent violated 21 DCMR 502.1 and is liable for a civil fine of \$500.00.

3. Respondent failed to answer both the first and the second Notice of Infraction without demonstrating sufficient cause for those failures, and therefore is liable for statutory penalties of \$1,000.00 in addition to the civil fine prescribed for the violation. D.C. Code §§6-2704(a)(2)(A) and 6-2704(a)(2)(B).

IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2000:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **7/13/00**

John P. Dean
Administrative Judge